In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-441

JOHN H. MEIER, PETITIONER

v.

GEORGE H. BOLDT, UNITED STATES DISTRICT JUDGE, DISTRICT OF NEVADA, AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner, who is under indictment in the United States District Court for the District of Nevada for tax evasion and conspiracy to defraud the United States, here seeks review of the court of appeals' denial (Pet. App. B) of his petition for a writ of mandamus ordering the district court to dismiss one count of the indictment and to suppress the testimony of a government witness.

Petitioner bases his claim for mandamus relief upon actions taken by other district courts that he contends constitute *res judicata* or create a collateral estoppel with respect to the substantive questions at issue:

(a) The case of a co-defendant, James P. Cowley, was severed and transferred to the United States District Court for the District of Utah. Cowley then moved in

that court for dismissal of the conspiracy count; Cowley's motion was granted, in part because that count failed to "allege that Cowley had a stake in any criminal venture" (Pet. App. D, p. 15). The government did not appeal. Petitioner then moved in the district court below for dismissal of the conspiracy count as to him, and that motion was denied (Pet. App. A). In the course of ruling on petitioner's motion, the district court rejected his claim of collateral estoppel, stating (Tr. 21):[1]

> * * * It is very clear * * * that Judge Ritter considered the case against Cowley as something special, different from the other defendants, and he made emphasis of the fact that the dismissal as to Count I was only as to the defendant Cowley.

(b) Petitioner brought suit, in both the district court below and the United States District Court for the Central District of California, requesting suppression of the testimony of a government witness, John Suckling, his former attorney. The district court in California enjoined Suckling *"from testifying* or presenting any evidence against plaintiff *in the Central District of California or any other District except the District of Nevada,* as to any confidential communication with plaintiff and any work and any corollary service incident thereto done for plaintiff by Suckling * * * " (Pet. App. E, p. 20; emphasis added).[2] The district court below denied petitioner's suppression motion.

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[1]"Tr." refers to the transcript of the August 1 and 2, 1974 proceedings in the district court.

[2]The government has appealed from that order (C.A. 9, Nos. 74-1182 and 74-1673).

We are advised by the United States Attorney for the District of Nevada that the following events occurred subsequent to the filing of the petition for a writ of certiorari. Petitioner's trial was set for December 2, 1974, and he failed to appear. The trial court ordered petitioner's trial bond forfeited and issued a bench warrant for his arrest. At a subsequent hearing, petitioner's attorney represented that petitioner was in London, England, and was too ill to travel. The trial court then ordered petitioner to report to the United States embassy in London for a medical examination. Petitioner failed to comply with the order. Instead, he checked out of his hotel in London and is believed to have flown to Vancouver, British Columbia, under an assumed name. Since petitioner is now a fugitive from justice, this Court should decline to review his case. See *Molinaro* v. *New Jersey*, 396 U.S. 365.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.